SINGAPORE REPORTS.

KEE SENG NEE v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) June 1, 1949]

[Singapore — Magistrate's Appeal No. 36 of 1949]

Criminal Trial — Whether Magistrate can recall prosecution witnesses after close of defence case.

In this case after counsel for the defence had addressed the Court the Magistrate recalled certain prosecution witnesses.

Held, that this was in the circumstances irregular and that the conviction must be quashed as the Magistrate had overcome the doubts which he presumably had before by means which were not open to him.

MAGISTRATE'S APPEAL.

D. G. Osborne-Jones for the Appellant.

A. D. Farrell for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the appellant was charged as follows :—

> That he on or about the 23rd day of February, 1949, at Jurong Road, Singapore, abetted the commission by one P.C. 888 Mohamed Yusof bin Abdul Samid, a public servant, of the offence of receiving an illegal gratification of two dollars ten cents Singapore currency for forbearing to do an official act to wit effect the arrest of both himself and one Koh Kim Peng for two persons riding on one bicycle, and thereby committed an offence punishable under s. 161 and s. 116 of Chapter 20.

The incident out of which this trouble arose was rather peculiar. The appellant and another man were found both riding the same bicycle. This apparently is an offence for which people can and are arrested.

The prosecution alleged that after being arrested the appellant offered money to a P.C. The appellant denied this. After counsel for the defence had addressed the Court the Magistrate recalled certain prosecution witnesses. This, it was admitted, was in the circumstances irregular. It was contended by the learned Deputy Public Prosecutor that this had not occasioned any miscarriage of justice. I am unable to agree. It is true that the evidence so obtained did not amount to much, but the Magistrate was presumably in some doubt before, and he seems to have overcome his doubt by means which were not open to him.

The appeal must be allowed and the conviction quashed. The sum of $2.10 will be returned to the appellant.

Appeal Allowed.

LOW OI LIN v. REX.

[App. Crim. Juris. (Taylor, J.) June 10, 1949]

[Singapore — Magistrate's Appeal No. 39 of 1949]

Sentence — Factors to be taken in assessing sentence.

It is doubtful whether the principle of one-third of the maximum imprisonment was ever generally applied in the Supreme Court. In assessing sentence all the circumstances of the offence proved should be considered.

Case referred to :—

(1) *Chiah Boon Hean v. Reg.* 1888 S.S. Law Reports p. 49.

MAGISTRATE'S APPEAL.

Eric Choa for the Appellant.

A. D. Farrell for the Respondent.

Cur. Adv. Vult.

Taylor, J. : — The appellant was convicted of assisting in carrying on a Chap Ji Kee lottery, and fined $1,000.00.

The evidence showed that when the house in which she lived was raided, the appellant was in possession of at least one staking slip and that she was a "collector" or minor assistant.

On the question of sentence the learned trial Magistrate states that offences of this type are prevalent and that the policy of the legislation requires substantial fines, both of which are correct. He also finds that the woman in this case was a mere pawn in the organisation which is, of course, a ground for leniency. He then refers to a digest of a case more than sixty years old in which it is stated that sentences of the Supreme Court on first offenders are based on the principle of one-third of the maximum imprisonment prescribed for the offence, *Chiah Boon Hean v. Reg.*[1].

A digest is intended to save time in looking for a case — it is not safe to substitute the summary for the case itself. If the Magistrate had looked at the actual report he would have seen that there was no written judgment and the report does not purport to reproduce the actual words used by the Judges. It is a summary only and it is manifestly unreliable because the decision does not follow the argument. The fine in that case was reduced from the maximum to one half — "all things considered".

That case is not and never was an authority for the proposition stated in the Digest and relied on by the Magistrate. The principles actually applied by the Court were, firstly that no attention should be paid